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Attorney Docket No. 24218

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Hans Peter ZENNER, et al.

Application No.: 09/530,693

Group Art Unit: 1653

Filed: July 3, 2000

Examiner: A. GUPTA

Title: **APPLICATION OF VASOPRESSIN ANTAGONISTS FOR TREATING
DISTURBANCES OR ILLNESSES OF THE INNER EAR**

TRANSMITTAL LETTER

ATTN: OFFICE OF PETITIONS
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith for filing in the U.S. Patent and Trademark Office is the following:

- (1) Transmittal Letter;
- (2) Petition for Revival of Application under 37 CFR 1.137(b);
- (3) Check No. 19618 for \$ 665.00 for Petition Fee;
- (4) Copy of Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures;
- (5) Copy of the Sequence Listing in CRF (computer readable form);
- (6) Copy of the Sequence Listing in paper form;
- (7) Statement that the paper and CFR copies are the same;
- (8) Copy of German insolvency proceeding documents;
- (9) English Translation of German insolvency proceeding documents;
- (10) Petition for a 5-month Extension of Time;
- (11) Check No. 19739 for \$ 1005.00 for the Extension of Time.

Respectfully submitted,
NATH & ASSOCIATES PLLC

By: 

Gary M. Nath
Registration No. 26,965
Jerald L. Meyer
Registration No. 41,194
Customer No. 20529

Date: November 12, 2003
NATH & ASSOCIATES PLLC
1030th 15th Street, NW - 6th Floor
Washington, D.C. 20005

GMN/JLM/jnr:Assig.CorrectiveCov.trans

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OFFICE OF PETITIONS



Attorney Docket No.: 24218
Serial No.: 09/530,693

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MS PETITIONS
OMB 0651-0031
Attorney Docket No. 24218

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First named Inventor:
Hans Peter ZENNER, et al.

Application No.: 09/530,693

Group Art Unit: 1653

Filed: July 3, 2000

Examiner: A. GUPTA

Title: APPLICATION OF VASOPRESSIN ANTAGONISTS FOR TREATING
DISTURBANCES OR ILLNESSES OF THE INNER EAR

PETITION TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION

Attn: Office of Petitions
Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The above-identified application became abandoned for failure to timely response to the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures mailed December 4, 2001 by the United States Patent and Trademark Office. The date of abandonment is the day after the one-month expiration date of the period set for reply in the notice.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION UNDER
37 CFR 1.137(b) AND SUBMITS THE FOLLOWING:

1. Petition Fee

X Small Entity Fee \$ 665.00 (37 CFR 1.17(m)).
Applicant claims small entity status.

Other then small entity - fee \$ _____ (37 CFR
1.17(m)).

2. Reply and/or Fee

A. The reply and/or fee to the above-noted Office
Action in the form of a Notice to Comply with
Requirements for Patent Applications Containing
Nucleotide Sequence and/or Amino Acid Sequence
Disclosures:

_____ has been filed previously on _____.

X is enclosed herewith.

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OFFICE OF PETITIONS

B. The Issue Fee of \$ _____:

_____ has been paid previously on _____.

_____ is enclosed herewith

3. Terminal Disclaimer with Disclaimer Fee

X Since this utility application was filed on or after June 8, 1995, no terminal disclaimer is required.

_____ A terminal disclaimer (and disclaimer fee under 37 CFR 1.20(d) of \$ _____ for a small entity or \$ _____ for other than a small entity disclaiming a period equivalent to the period of abandonment is enclosed herewith.

4. Petition for Expedited Services is requested for Revival of Application under 37 CFR 1.137(b) with \$ 130.00 Fee:

_____ in enclosed herewith

_____ to be debited from account 14-0112

Applicants assert that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The inventors, also referred to as the applicants, of the subject matter as disclosed in the above application (i.e. vasopressin antagonist for treating illnesses of the inner ear) filed July 3, 2000, Hans Peter ZENNER, J. Peter RUPPERSBERG, and Hubert LOEWENHEIM, in good faith assigned their rights to Otogene Aktiengesellschaft, a corporation of Germany in May of 2000.

On August 24, 2001 a Restriction Requirement was mailed to the U.S. attorney of record on behalf of Otogene Aktiengesellschaft requesting Otogene Aktiengesellschaft to elect either Group I, drawn to a composition and a method for treating disturbances or illnesses of an inner ear using a peptide that functions as a vasopressin receptor antagonist (Emphasis omitted), or Group II, drawn to a method for treating disturbances or illnesses of an inner ear using a non-peptide organic substance such as a benzazepine derivative or an indole derivative that functions as a vasopressin receptor antagonist (Emphasis omitted).

On September 21, 2001, a timely and fully responsive response to the Restriction Requirement was mailed traversing the Examiners imposition of a Restriction Requirement under 35 U.S.C. 121 and 372 and elected the claims directed to Group II.

On December 4, 2001 a Notice to Comply with Requirements for Patent Applications containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures was mailed to the U.S. attorney of record on behalf of Otogene Aktiengesellschaft with a one-month time for response, with extensions of time available under 37 CFR 1.136(a) for a reply up to June 4, 2002. The notice requested Otogene Aktiengesellschaft to submit a computer readable form (CRF) and paper copy of the Sequence Listings in the above captioned application. The notice also required that a statement that computer readable form copy and paper copy are the same and includes no new matter.

On December 18, 2001 Otogene Aktiengesellschaft filed for insolvency, with the proceedings for insolvency being opened on April 2, 2002 and the court appointing a trustee in bankruptcy on April 3, 2002.

Between December 18, 2001, after Otogene Aktiengesellschaft filed for insolvency, and April 3, 2002 when a trustee was finally appointed by the court in the insolvency proceedings, Otogene Aktiengesellschaft was not in a position to reply to the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures since Otogene Aktiengesellschaft was awaiting the appointment of the trustee, who was charged with overseeing the company's operations.

After the court for the insolvency proceedings appointed the trustee, the trustee was unable to act on behalf of the inventors by court mandate since the creditors would not allow funds to be expended on the company's behalf. Thus, the trustee was not authorized to allow a response to the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures to be filed at the United States Patent and Trademark Office.

On August 30, 2002 a Notice of Abandonment was mailed to the U.S. attorney of record on behalf of Otogene Aktiengesellschaft.

On March 17, 2003, one of the inventors, Hubert LOEWENHEIM, purchased the rights to U.S. application serial no. 09/530,693, the current application under petition, during the insolvency proceedings for Otogene Aktiengesellschaft. After taking time to investigate and consider the matter, Mr. LOEWENHEIM has determined that reviving this application is his best course of action.

Since neither the inventors, nor Otogene Aktiengesellschaft, could act to preserve the applicants rights for a U.S. Patent for the subject matter contained in U.S. Patent Application Serial No. 09/530,693 during the time prior to Mr. LOEWENHEIM's re-acquisition of rights in the application, applicants respectfully request that the above captioned application be revived under 37 CFR 1.137(b) and forwarded to the appropriate TC for review on its merits.

Should any questions or comments arise in connection with the filing of this petition, Applicant respectfully requests a telephone call to the undersigned attorney at the telephone number shown.

Respectfully submitted,

NATH & ASSOCIATES PLLC

By: 

Gary M. Nath
Registration No. 26,965
Jerald L. Meyer
Registration No. 41,194
Customer No. 20529

Date: November 12, 2003
NATH & ASSOCIATES PLLC
1030 15TH Street, N.W. 6th Floor
Washington, D.C. 20005
Tel. 202-775-8383
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GMN/JLM/jnr:Petition to Revive



UNITED STATES PATENT AND TRADEMARK OFFICE

DTAG-1-16944
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,693	07/03/2000	HANS PETER ZENNER	24218	3546

26389 7590 12/04/2001

CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE, WA 98101-2347

RECEIVED DOCKETING

DEC 10 2001

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS PLLC

EXAMINER

GUPTA, ANISH

ART UNIT

PAPER NUMBER

1653

DATE MAILED: 12/04/2001

DOCKETED

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.

EXAMINER	
ART UNIT	PAPER NUMBER

DATE MAILED:

Please find below a communication from the EXAMINER in charge of this application

Commissioner of Patents

This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2) (see page 9, experimental section). However, this application fails to comply with the requirements of 37 CFR 1.821 through 1.825 for the reason(s) set forth on the attached Notice To Comply With Requirements For Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures. Applicant must comply with the requirements of the sequence rules (37 CFR 1.821 - 1.825) before the application can be examined under 35 U.S.C. §§ 131 and 132.

Applicant is given ONE MONTH from the mailing date of this communication within which to comply with the sequence rules, 37 CFR 1.821 - 1.825. Failure to comply with these requirements will result in ABANDONMENT of the application under 37 CFR 1.821(g). Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a). Direct the reply to the undersigned. Applicant is requested to return a copy of the attached Notice to Comply with the reply.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anish Gupta whose telephone number is (703) 308-4001. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low, can normally be reached on (703)308-2923. The fax phone number of this group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Anish Gupta

Karen Cochrane Carlson P.D.

KAREN COCHRANE CARLSON, PH.D.
PRIMARY EXAMINER

NOTICE TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING NUCLEOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURES

Applicant must file the items indicated below within the time period set the Office action to which the Notice is attached to avoid abandonment under 35 U.S.C. § 133 (extensions of time may be obtained under the provisions of 37 CFR 1.136(a)).

The nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements for such a disclosure as set forth in 37 C.F.R. 1.821 - 1.825 for the following reason(s):

- ☒ 1. This application clearly fails to comply with the requirements of 37 C.F.R. 1.821-1.825. Applicant's attention is directed to the final rulemaking notice published at 55 FR 18230 (May 1, 1990), and 1114 OG 29 (May 15, 1990). If the effective filing date is on or after July 1, 1998, see the final rulemaking notice published at 63 FR 29620 (June 1, 1998) and 1211 OG 82 (June 23, 1998).
- ☐ 2. This application does not contain, as a separate part of the disclosure on paper copy, a "Sequence Listing" as required by 37 C.F.R. 1.821(c).
- ☐ 3. A copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 C.F.R. 1.821(e).
- ☐ 4. A copy of the "Sequence Listing" in computer readable form has been submitted. However, the content of the computer readable form does not comply with the requirements of 37 C.F.R. 1.822 and/or 1.823, as indicated on the attached copy of the marked -up "Raw Sequence Listing."
- ☐ 5. The computer readable form that has been filed with this application has been found to be damaged and/or unreadable as indicated on the attached CRF Diskette Problem Report. A Substitute computer readable form must be submitted as required by 37 C.F.R. 1.825(d).
- ☐ 6. The paper copy of the "Sequence Listing" is not the same as the computer readable form of the "Sequence Listing" as required by 37 C.F.R. 1.821(e).
- ☐ 7. Other: _____

Applicant Must Provide:

- ☒ An initial or substitute computer readable form (CRF) copy of the "Sequence Listing".
- ☒ An initial or substitute paper copy of the "Sequence Listing", as well as an amendment directing its entry into the specification.
- ☒ A statement that the content of the paper and computer readable copies are the same and, where applicable, include no new matter, as required by 37 C.F.R. 1.821(e) or 1.821(f) or 1.821(g) or 1.825(b) or 1.825(d).

For questions regarding compliance to these requirements, please contact:

For Rules Interpretation, call (703) 308-4216

For CRF Submission Help, call (703) 308-4212

PatentIn Software Program Support

Technical Assistance.....703-287-0200

To Purchase PatentIn Software.....703-306-2600

PLEASE RETURN A COPY OF THIS NOTICE WITH YOUR REPLY